



[6714-01-P]

Federal Deposit Insurance Corporation

12 CFR Part 341

RIN 3064-AE41

Proposed Revisions to the FDIC's Rules and Regulations Requiring the Registration of Securities Transfer Agents

AGENCY: Federal Deposit Insurance Corporation (FDIC)

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend its regulations requiring insured State nonmember banks, or subsidiaries of such banks, that act as transfer agents for qualifying securities under section 12 of the Securities Exchange Act of 1934 ('34 Act) to register with the FDIC. First, the proposed amendments would require insured State savings associations and subsidiaries of such State savings associations that act as transfer agents for qualifying securities to register with the FDIC, similar to the registration requirements applicable to insured State nonmember banks and subsidiaries of such banks. Second, the proposed amendments would revise the definition of qualifying securities to reflect statutory changes to the '34 Act made by the Jumpstart Our Business Startups Act (JOBS Act). The proposed amendments are consistent with the FDIC's continuing review of its regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3064-AE41, by any of the following methods:

- **Agency Website:** <http://www.fdic.gov/regulations/laws/federal/> .
Follow instructions for submitting comments on the Agency website.
- **E-mail:** Comments@fdic.gov. Include the RIN 3064-AE41 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.
- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to

<http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at 1 (877) 275-3342 or 1 (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: Judy Gross, Senior Policy Analyst, (202) 898-7074, jugross@fdic.gov; or Rachel Ackmann, Counsel, (202) 898-6858, rackmann@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The '34 Act provides that an entity must register as a transfer agent if it functions as a transfer agent with respect to any security registered under section 12 of the '34 Act (Section 12) or if it would be required to be registered except for the exemption from registration provided by

Section 12(g)(2)(B) or Section 12(g)(2)(G).¹ A transfer agent registers by filing an application for registration with the appropriate regulatory agency.² Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act³ (Dodd-Frank Act), the FDIC was the appropriate regulatory agency only for a state-chartered (State) insured bank that is not a member of the Federal Reserve System and a subsidiary of any such bank, and the Office of Thrift Supervision (OTS) was the appropriate regulatory agency for a State or federal savings association.⁴

In 2010, the Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. On July 21, 2011, (the “transfer date” established by section 311 of the Dodd-Frank Act), the powers, duties, and functions formerly assigned to, or performed by, the OTS were transferred to (i) the FDIC, as to State savings associations; (ii) the Office of the Comptroller of the Currency (OCC), as to Federal savings associations; and (iii) the Board of Governors of the Federal Reserve System, as to savings and loan holding companies. The Dodd-Frank Act also amended the ’34 Act to define the FDIC as the appropriate regulatory agency for insured State savings associations, and subsidiaries thereof, along with insured State nonmember banks, and subsidiaries thereof.⁵

In 2012, the JOBS Act increased the thresholds at which securities must be registered under Section 12(g)(1) with the Securities and Exchange Commission (SEC).⁶ As amended by the JOBS Act, Section 12(g)(1) generally requires securities’ issuers to register their securities

¹ 15 U.S.C. 78q-1(c)(1).

² 15 U.S.C. 78q-1(c)(2).

³ Pub. L. 111-203 (2010).

⁴ 15 U.S.C. 78c. Additionally, the FDIC has authority to make such rules and regulations as may be necessary to implement the provisions in the ’34 Act related to the registration of transfer agents of any institution for which it is the appropriate regulatory agency. 15 U.S.C. 78w(a).

⁵ Pub. L. 111-203, Section 376(a) (2010).

⁶ Pub. L. 112-106 (2012).

when the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either-- (i) 2,000 persons or (ii) 500 persons who are not accredited investors (as such term is defined by the SEC).⁷

The JOBS Act also amended Section 12(g)(1) to provide that in the case of an issuer that is a bank or a bank holding company, the issuer's securities must be registered when the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons.⁸

Part 341 of the FDIC's regulations (part 341) implements Section 12 of the '34 Act by requiring State nonmember banks and subsidiaries thereof that are transfer agents of qualifying securities to register with the FDIC.⁹ (Part 341 does not currently include requirements for State savings associations or their subsidiaries.) Part 341 defines "qualifying securities" as securities registered on a national securities exchange; or securities issued by a company or bank with 500 or more shareholders and \$1 million or more in total assets, except for securities exempted from registration with the SEC by Section 12(g)(2) (C, D, E, F and H).¹⁰ The second prong of the definition of qualifying securities, regarding securities issued by a company or bank with 500 or more shareholders and \$1 million or more in total assets, is derived from the statutory requirements in Section 12(g)(1) for registering securities with the SEC.¹¹ As a result of the amendments to the '34 Act made by the Dodd-Frank Act and the JOBS Act, the current exclusion of State savings associations and subsidiaries thereof and the regulatory definition of qualifying securities currently found in part 341 is inconsistent with the statutory threshold for

⁷ 15 U.S.C. 78l(g)(1)(A).

⁸ 15 U.S.C. 78l(g)(1)(B).

⁹ 12 CFR part 341.

¹⁰ 12 CFR 341.2.

¹¹ 15 U.S.C. 78l.

registration requirements now provided in Section 12(g)(1).

The OTS did not issue a rule regarding the registration of securities transfer agents. Instead, the OTS issued a memorandum to covered financial institutions informing such institutions that because of statutory changes in the Financial Services Regulatory Relief Act of 2006,¹² savings and loan associations, their subsidiaries, and savings and loan holding companies should register as transfer agents with the OTS rather than the SEC.¹³ Therefore, this proposed rule would not rescind any regulation issued by the OTS that was transferred to the FDIC following the transfer date.

II. Description of the Proposed Rule

a. Section 341.1 Scope

The proposed rule is part of the FDIC's continuing efforts to enact rule changes required by the Dodd-Frank Act and more recent statutory changes, such as the JOBS Act, and would make it clear that part 341 would apply to insured State nonmember banks, insured State savings associations, and the subsidiaries of such institutions. Expanding the scope of part 341 to include State savings associations is consistent with provisions of the Dodd-Frank Act and serves to increase regulatory consistency for all FDIC-supervised institutions. To that end, the proposed rule would define the term "covered institution" to include an insured State nonmember bank, an insured State savings association, and the subsidiaries of such institutions.

b. Section 341.2 Definitions

The proposed rule would reconcile the regulatory definition of qualifying securities with the statutory amendments to the '34 Act required by the JOBS Act. The proposed rule would

¹² Pub. L. 109-301 (2006).

¹³ OTS CEO Memorandum Number 258 (July 27, 2007), available at <http://www.occ.gov/static/news-issuances/ots/ceo-memos/ots-ceo-memo-258.pdf>.

define qualifying securities as (1) securities registered on a national securities exchange pursuant to Section 12(b) (15 U.S.C. 78l(b)) or (2) securities required to be registered under Section 12(g)(1) (15 U.S.C. 78l(g)(1)), except for securities exempted from registration with the SEC by Section 12(g)(2) (C, D, E, F, and H). As such, securities exempted from registration with the SEC by sections 12(g)(2)(B) and (G) of the '34 Act would be included in the definition of qualifying securities. (Section 12(g)(2)(B) of the '34 Act includes securities issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), and Section 12(g)(2)(G) refers to securities of certain insurance companies.) Therefore, the proposed definition of qualifying securities would include: (a) securities registered on a national securities exchange; (b) securities issued by (1) a company with total assets in excess of \$10 million and a class of equity securities (other than exempted securities) held of record by either: (i) 2,000 persons, or (ii) 500 persons who are not accredited investors or (2) a bank with total assets exceeding \$10 million and a class of equity securities (other than exempted securities) held of record by 2,000 or more persons; (c) securities issued by investment companies registered pursuant to section 15 U.S.C. 80a-8; and (d) securities issued by insurance companies exempt from registration under Section 12(g)(2)(G).

The proposed definition of “qualifying securities” would cite to Section 12(g)(1) instead of reciting specific quantitative standards to ensure that the FDIC’s regulations remain consistent with any future statutory changes to Section 12(g)(1) .

c. Section 341.7 Delegations of authority.

The proposed rule would remove the delegations of authorities related to the registration of securities transfer agents from the rule. In the past, the FDIC has taken steps to remove delegations of authority from its regulations in order to provide the agency greater flexibility in

the decision-making process.¹⁴ The proposed removal of the delegations of authority from the regulation would not change the existing delegation; it would simply move the delegation from the FDIC's regulations. Interested parties may access the FDIC's current delegations of authority on the agency's website, at www.fdic.gov.

d. Technical Corrections

The proposed rule would also make certain technical corrections to part 341, such as revising outdated citations and updating the name of the FDIC division granted delegated authority to act on disclosure matters.

III. Request for Comment

The FDIC invites comment on all aspects of the proposed rule. Specifically, should the rule include the definition of "qualifying securities" instead of referring to the exemptions in the '34 Act?

IV. Regulatory Analyses

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.¹⁵ The FDIC has reviewed the proposed rule and determined that it would not introduce any new collection of information pursuant to the PRA.

B. Regulatory Flexibility Act Analysis

¹⁴ 67 FR 79246 (Dec. 27, 2002).

¹⁵ 44 U.S.C. 3501-3521. The current OMB Control Numbers for state nonmember banks filing the transfer agent registration and amendment form is OMB Control No: 3064-0026. The current OMB Control Numbers for state savings associations filing the transfer agent registration and amendment form is OMB Control No: 3064-0027.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of \$550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. For the reasons provided below, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

The proposed rule would not affect a substantial number of small entities.¹⁶ Currently only 17 entities are registered with the FDIC as registered transfer agents. Additionally, the FDIC has not received any new registrations for several years. In fact, over the last 10 years, 18 entities have deregistered as transfer agents (the most recent deregistration was in 2014). Furthermore, if any currently registered transfer agent does not meet the threshold requirements, it could deregister if the proposed rule were adopted as a final rule. Therefore, the proposed rule would likely reduce burden on small entities by increasing the number of entities that could deregister with the FDIC. As such, the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites comment on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the FDIC

¹⁶ In 2010, the OTS estimated that 5 savings associations would be required to register as transfer agents. 75 FR 22184 (2010).

present the rule more clearly?

- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the FDIC incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 341

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 341 of chapter III of title 12, Code of Federal Regulations as follows:

PART 341—REGISTRATION OF SECURITIES TRANSFER AGENTS

1. The authority citation for part 341 continues to read as follows:

Authority: Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q-1 and 78w(a)).

2. Revise § 341.1 to read as follows:

§ 341.1 Scope.

This part is issued by the Federal Deposit Insurance Corporation (the FDIC) under sections 2, 3(a)(34)(B), 17, 17A and 23(a) of the Securities Exchange Act of 1934 (the Act), as amended (15 U.S.C. 78b, 78c(a)(34)(B), 78q, 78q-1 and 78w(a)) and applies to all insured State nonmember banks, insured State savings associations, or subsidiaries of such institutions, that act as transfer agents for securities registered under section 12 of the Act (15 U.S.C. 78l), or for securities exempt from registration under subsections (g)(2)(B) or (g)(2)(G) of section 12 (15 U.S.C. 78l(g)(2)(B) and (G)) (securities of investment companies, including mutual funds, and certain insurance companies). Such securities are qualifying securities for purposes of this part.

3. Amend § 341.2 by revising paragraphs (h) and (i) to read as follows:

§ 341.2 Definitions.

* * * * *

(h) The term covered institution means an insured State nonmember bank, an insured State savings association, and any subsidiary of such institutions.

(i) The term qualifying securities means:

(1) Securities registered on a national securities exchange (15 U.S.C. 78l(b)); or

(2) Securities required to be registered under section 12(g)(1) of the Act (15 U.S.C. 78l(g)(1)), except for securities exempted from registration with the SEC by section 12(g)(2) (C, D, E, F, and H) of the Act.

4. Amend § 341.3 by revising paragraph (a) and the last sentence in paragraph (c) to read as follows:

§ 341.3 Registration as securities transfer agent.

(a) Requirement for registration. Any covered institution that performs any of the functions of a transfer agent as described in § 341.2(a) with respect to qualifying securities shall register with the FDIC in the manner indicated in this section.

* * * * *

(c) * * * Form TA–1 may be completed electronically and is available from the FDIC at www.fdic.gov or the Federal Financial Institutions Examination Council at www.ffeic.gov, or upon request, from the Director, Division of Risk Management Supervision (RMS), FDIC, Washington, DC 20429.

5. Amend § 341.5 by revising the last sentence in paragraph (b) to read as follows:

§ 341.5 Withdrawal from registration.

* * * * *

(b) * * * A Request for Deregistration form is available electronically from www.fdic.gov or by request from the Director, Division of Risk Management Supervision (RMS), FDIC, Washington, DC 20429.

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§ 341.7 [Removed]

6. Remove § 341.7.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of December, 2015.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

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